IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-04-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION Nos.22662 & 22663 OF 2002

1. The Chief Commissioner of
   Income Tax,
   121,M.G. Road, Nungambakkam,
   Chennai 34.

2. The Senior Accounts Officer,
   Zonal Accounts Officer,
   Central Board of Direct Taxes,
   Chennai 6.

3. The Additional Commissioner of
   Income Tax, Audit / (Admin)
   121, M.G. Road,
   Chennai 34. .. Petitioners 1 to 3 in
   WP.22662/02.

1.The Chief Commissioner of
Income Tax, 121, MG Road
Nungambakkam
Chennai-34.

2.The Zonal Accounts Officer
Central Board of Direct Taxes
Chennai-6. .. Petitioner 1 & 2 in
WP.No.22663/02.

Vs.

1. The Central Administrative Tribunal,
   rep. by its Registrar,
   Chennai Bench, High Court Buildings,
   Chennai 104. .. 1st Respondent in both WPs

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2. S. Raghavan,
No.4C/CGE,47, Thirumurgan Street,
Kalakshetra Colony, Besant Nagar,
Chennai 90. .. 2nd Respondent in W.P. No.22662/2002

3. P. Gunasekaran
No.49/9B, Corporation Lane,
Kosapet, Chennai 12. .. 2nd Respondent in W.P. No.22663/2002

W.P.No.22662 of 2002 has been filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for records of the 1st respondent Tribunal in O.A.No.656/2001 dated 14.12.2001 and quash the same.

W.P.No.22663 of 2002 has been filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for records of the 1st respondent Tribunal in O.A.No.826/2001 dated 4.2.2002 and quash the same.

For Petitioners in both WPs : Mr.Vijay Shankar for Mr.M.Veluswami

For Respondent No.2 in both WPs : Mr.Karthick

COMMON JUDGMENT

P.K.MISRA,J.

W.P.No.22662 of 2002 is directed against the decision of the Central Administrative Tribunal, Chennai Bench in O.A.No.656 of 2001 dated 14.12.2001.

W.P.No.22663 of 2002 is directed against the decision of the Central Administrative Tribunal, Chennai Bench in O.A.No.826 of 2001 dated 4.2.2002.

2. Since common question of law is involved in both the matters, they shall be disposed of by the present common judgment.

3. Respondent No.2 in each of the writ petition were working under the Income Tax Department. Both of them had retired on 31.3.1995 on attaining the age of

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superannuation. Retiral benefits calculated on the basis of the Rules applicable were paid to the persons concerned. As per the rules applicable on 31.3.1995, 20% of the basic pay was added as dearness pay and DCRG was calculated on that basis, which was paid to the concerned respondents. On 14.7.1995, the Department of Personnel and Training issued Office Memorandum D.P. & P.W., O.M.No.7/1/95-P & P.W.(F), dated 14.7.1995, which enhanced payment of gratuity by taking into account 97% of pay as dearness pay to be added to pay for calculating gratuity. This Memorandum was to apply only to those persons who had retired on or after 1.4.1995. Even though, subsequently, the concerned respondent made representation claiming the benefit of the Office Memorandum dated 14.7.1995, such claim was turned down on the ground that the Office Memorandum was applicable to the persons who retired on or after 1.4.1995 and not applicable to those who had retired on 31.3.1995. Original Applications were filed challenging such decision.

The Tribunal referred to the following observation of the Bombay Bench of the Central Administrative Tribunal and allowed the Original Applications :-

> "... A Government servant completing the age of superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day, is deemed to have effectively retired from service with effect from 1.4.1995."

The aforesaid decision of the Tribunal is being challenged in these two writ petitions.

4. The only contention raised by the learned counsel for the petitioners is to the effect that the Office Memorandum dated 14.7.1995 specifically makes it applicable to a person who retires on or after 1.4.1995. It is submitted by him that a person who attains the age of superannuation and retires on the last day of the month i.e., 31.3.1995, cannot said to be retired on or after 1.4.1995. The interpretation of the Bombay Bench of the Central Administrative Tribunal is not tenable and as a matter of fact, such decision has been challenged before the Bombay High Court and the matter is admitted and interim stay of the order of the Tribunal was granted on 18.4.2000.

5. Learned counsel appearing for Respondent No.2 on the other hand has submitted that benefit of the Office Memorandum dated 14.7.1995 should be made available to a person who retires on 31.3.1995 as it can be assumed that

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he was in service till the midnight of 31.3.1995 and it can be said that he retired only on 1.4.1995, as 1.4.1995 deemed to have commenced just after the mid-night of 31.3.1995. In this context he has further submitted that the provision being beneficial, should be construed liberally and, if there is any doubt, the interpretation should lean in favour of the employee rather than in favour of the employer.

6. The validity of the Office Memorandum dated 14.7.1995 has not been challenged. It is neither contended before the Tribunal nor before this Court that fixation of date, 1.4.1995, is arbitrary and the benefit should be made available to all those who were in service on or before 31.3.1995. The only question which arises for determination therefore is whether the benefit under the Office Memorandum can be available to those who had worked on 31.3.1995 and retired on that day.

7. The relevant portion of the Office Memorandum dated 14.7.1995, on the basis of which the respondents are claiming benefit, is extracted hereunder :-

> "... Accordingly, the President is pleased to decide that dearness allowance linked to (AICPI) 1201.66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Central Civil Services (Pension) Rules, 1972, in the case of Central Government employees who retire or die on or after 1st April, 1995.
>
> 2. The President has also been pleased to decide that the ceiling on the maximum amount of retirement gratuity/death gratuity may be raised from Rs.1.00 lakh to Rs.2.50 lakhs with effect from 1st April, 1995.
>
> 3. In the case of persons who have already retired/died on or after 1st April, 1995, the retirement gratuity/death gratuity may be recomputed suo motu on the basis of these orders by the Pension Sanctioning Authorities and arrears, if any paid."

8. Retirement is on the afternoon of the last day of the month in which the employee attains the age of

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superannuation. If a person actually retired on the afternoon of the last day of the month, it cannot be said that he retired on the first of the next month. In this regard, it may be useful to refer to Fundamental Rule 56 which provides that every Government servant could retire from service "on the afternoon of the last day of the month" in which he attained the age of 58 years.

9. The Bombay Bench of the Central Administrative Tribunal has introduced a fiction that a person who retires on the afternoon of 31.3.1995 is deemed to have effectively retired from service with effect from 1.4.1995. We do not think that, in view of the clear language in the Office Memorandum dated 14.7.1995, there is scope for giving such an interpretation as determined by the Tribunal.

10. It is contended that merely when a person retires on 31.3.1995, he is being deprived of the benefit which is available to those who retired on or after 1.4.1995 and therefore, it is irrational and without any basis. However contesting respondent concedes that the Government has the right to prescribe the cut-off date and that the revised DCRG would apply from 1.4.1995. Therefore, there is no logic in stating that the benefit should be given only to the persons who retired on 31.3.1995 upto 1.4.1995 (i.e.) for one day.

11. As already indicated, the validity of the Office Memorandum on the ground that the cut-off date has been arbitrarily fixed, is not under challenge. If this logic is extended, a person, who retires at the end of February, his date of birth being 28th February, can contend that a person born during the month of March can get the benefit and not the person who born in the last day of February.

12. Learned counsel for the petitioner has further contended that Bombay Bench of the Administrative Tribunal has indicated that the person who retires on the afternoon of 31.3.1995 continues to be a Government servant till the midnight of 31.3.1995 and therefore it can be said that he retired on or after 1.4.1995.

13. We do not think such a contention can be accepted. On a plain reading of Fundamental Rule 56, there is no scope for interpreting the date of superannuation (i.e.) 31.3.1995 as effective from 1.4.1995. It must be taken that there is a moment gap between 31st end of March, 1995 and the arrival of 1st April, 1995. If the date is so

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extended, the next question will be why not till end of the next month. The cut-off date will therefore become meaningless.

14. For the aforesaid reasons, we are unable to accept the order of the Central Administrative Tribunal, which is accordingly quashed and the writ petitions are allowed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Central Administrative Tribunal,
rep. by its Registrar,
Chennai Bench, High Court Buildings,
Chennai 104.

2.The Chief Commissioner of Income Tax
121, M.G.Road, Nungambakkam
Chennai-34.

3.The Senior Accounts Officer
Zonal Accounts Officer
Central Board of Direct Taxes
Chennai-6.

3.The Additional Commissioner of Income Tax Audit (Admin)
121, M.G.Road, Chennai-34.

Two ccs to Mr.M.Veluswami, Advocate Sr.No.20773,20774.

TEJ (CO)
RSM/12.5.2006

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